STRAITS SETTLEMENTS REPORTS.

PUBLISHED BY AUTHORITY.

[APPELLATE CRIMINAL JURISDICTION]

BURTON, Ag. C.J.

June 5, 1935.

REX (MR. N. A. WORLEY, D.P.P.)

vs.

WONG AH KIN & OTHERS.

[SINGAPORE MAGISTRATE'S APPEAL No. 12 of 1935]

Evidence—Admissibility—Statement by accused person at time of arrest to assistant Protector of Chinese—Evidence Ordinance, Sections 17, 21.

A statement in the nature of an admission voluntarily made by an accused person to an Assistant Protector of Chinese is admissible in evidence against him.

Rasiah v. *Public Prosecutor*, (1931-1932) F.M.S.L.R. 45 applied.

Appeal preferred by the Deputy Public Prosecutor against the order of acquittal of the Second Police Magistrate at Singapore. The accused were charged with assisting in the management of a brothel an offence punishable under Section 7 (a) of Ordinance No. 15 of 1930 (Women and Girls Protection). At the time of their arrest they admitted to Mr. McNeice, Assistant Protector of Chinese, who raided the premises where they were found, that they were prostituting there and that they managed the house in "kongsi." After hearing the evidence of Mr. McNeice, the learned Magistrate acquitted the accused without calling on the defence.

Three respondents appear in person.

Worley, Deputy Public Prosecutor, appellant.

The general rule affecting the admissibility and relevancy of admissions and confessions is deducible from Sections 17 and 21 of the Evidence Ordinance. Confessions are irrelevant if induced by any threat or promise of favour, etc., (section 24), if made to a police officer under the rank of Inspector (section 25) if made while the accused person is in police custody unless in the presence of a Magistrate or if made inadmissible by the effect of Section 121 of the Criminal Procedure Code. There is no evidence of any inducement having been made to the accused persons in this case. In the absence of evidence it is not to be presumed that a statement otherwise admissible and not objected to has been induced. *R.* v. *Thompson*, (1893) 2 Q. B. 12. The statement in this case was not made to a Police Officer. The learned Magistrate was wrong in drawing an analogy between an Assistant Protector of Chinese with a Police Officer. Section 25 of the Evidence Ordinance could not apply, as an Assistant Protector of Chinese is certainly not the equivalent of a non-commissioned officer or a constable, nor was Section 26 applicable, the accused not being in custody at the time. Section 121 of the Criminal Procedure Code is irrelevant as the statement was not made in the course of a police investigation.

Sections 25 and 26 of the Evidence Ordinance should be construed strictly. A Police Officer has no powers under the Women & Girls Protection Ordinance. A Protector of Chinese as such has no powers under the Police Force Ordinance or the Criminal Procedure Code. He referred to *Rasiah* v. *Public Prosecutor*, (1931-1932) F.M.S.L.R. 45 and *Woodroffe & Ameer Ali's* Law of Evidence, 9th Edn. 286. A power to arrest does not make a person a police officer. The fact that the general public have a certain duty to arrest (*vide*, sections 18 & 33 of the Criminal Procedure Code) does not make them police officers. The legislature must not be taken to have intended to include persons it has not mentioned.

Burton, Ag. C.J., delivered oral judgment, allowing the appeal and setting aside the order of acquittal.

Cur. Ad. Vult.

BURTON, AG. C.J.—I think there is very little I need say in this matter. It turns on the improper rejection of a piece of evidence by the Magistrate. In this case, Mr. McNeice, who is an Assistant Protector of Chinese, raided a house and when he entered he asked the occupants some questions (apparently) and the occupants of the house made a statement which implicated them criminally. The learned Magistrate rejected that statement on the ground that the Protector of Chinese on the point of arresting someone summarily is in no way different from a policeman so doing, and the learned Magistrate said that by analogy admissions made to him in that way are inadmissible.

I think the Magistrate is wrong in drawing that analogy. He is bound, as everyone else is, by the Evidence Ordinance. The Evidence Ordinance defines an admission and a confession, a confession being included under the general definition of admissions. And then under section 21 it makes admissions relevant. The effect of that is that all confessions are relevant and can be proved unless they are excluded by some other section of the Ordinance, or by some other rule of law not perhaps contained in the Ordinance. The only sections which the Magistrate can possibly refer to in this case are

sections 25 and 26 which make confessions to a police officer below the rank of inspector incapable of being proved, or confessions made by an accused person in custody to the police, not to be proved.

Now, it is perfectly clear to my mind that when the Evidence Ordinance says 'Police' it means police, or when an Ordinance says 'police officer' it must mean police officer, and it does not mean that the words 'police officer' can be extended by analogy to include anybody who is acting in some such way as a police officer might be expected to act, or exercising powers analogous to a police officer. The words 'police officer' must be construed strictly to mean that he is a member of the Police Force and nothing else. It follows therefore, I think, that the learned Magistrate wrongly rejected this evidence, and I think that the Appeal should be allowed on that ground. I have already committed myself to a similar view in the Federated Malay States in the case of *Rasiah* v. *P.P.*, (1931-1932) F.M.S.L.R. p. 45, which has been referred to, where I went through the authorities, and I do not think it is necessary for me to go through them again now. I think the conclusion is obvious that the learned Magistrate should not have rejected this evidence.

Whether the evidence in itself was sufficient for a conviction, of course, does not matter now and I do not express any view on that point. I think that the appeal should be allowed and the acquittal of Nos. 1, 2 and 3, set aside.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.

July 15, 1935.

THE SINGAPORE IMPROVEMENT TRUST vs. SYED AHMED BIN MOHAMED BIN ALI ALJUNIED & ANOR.

[SINGAPORE O.S. No. 78 of 1935]

Ordinance No. 135 (Municipal) S. 144—S. 3—definition of "owner"—Singapore Improvement Ordinance 1927 as amended—S. 2(2)—back lane powers—payment of compensation—S. 105(a)—rate of interest on compensation.

In applying the provisions of S. 141 of Ordinance No. 135 (Municipal) to those of S. 144, in S. 141 (13) the word "Commissioners" must be read as "the Board" and the provisions of part VIII of the Singapore Improvement Ordinance 1927 (as amended) must be applied to a claim by a person interested in a backlane, though S. 105 (1) of that Ordinance clearly deals with other matters. By reason of the definition of the word "owner" in S. 3 of Ordinance 135 (Municipal), the Commissioners or the Singapore Improvement Trust can pay compensation payable in respect of an acquisition for backlane purposes to the persons specified in that definition. A single trustee cannot agree the amount of compensation and a mere agent is not a "person entitled" so as to enable him to agree the amount of such compensation. S. 105A of the Singapore Improvement Ordinance as amended applied to such a case and interest will be payable on the compensation moneys in accordance with the principles therein laid down.

In this case a back lane order had been made by the Governor-in-Council under Section 144 of Ordinance 135 (Municipal). In the result a portion of the dwelling house and premises known as No. 49 Temple Street was taken for backlane purposes. After deducting half of the backlane in respect of which the owner of No. 49 Temple Street would receive no compensation there remained a balance of 26 square feet for which such owner would be compensated in accordance with the provisions of Section 144 sub-section 9(b) of Ordinance 135 (Municipal). No. 49, Temple Street was vested in the first Defendant the sole surviving trustee of the Will of Sheriffa Sheika bin Omar Aljunied deceased which will contained no power of sale. The second Defendants were the persons for the time being receiving the rents of the premises as agents for the first Defendant and therefore came within the actual words of the definition of the word "owner" contained in section 3 of Ordinance 135 (Municipal).

The Board negotiated with both defendants concerning the amount to be paid as compensation for the acquisition of these 26 square feet and the sum of $260 was agreed upon subject however to the question whether the Defendants or either of them could validly agree to such compensation. Questions also arose whether the first Defendant or either Defendant could give a valid receipt for such compensation moneys and also as to interest and whether any interest should be paid in respect of such compensation and if so at what rate and from what time.

John Laycock for the Plaintiffs.

The first Defendant being a sole trustee without any power of sale can neither agree the compensation nor give a valid receipt for the compensation moneys; see Trustees Ordinance 1929 Section 15 Subsection 2 "a sole trustee cannot give a valid receipt for capital money arising under the trust for the sale of land." *A fortiori* if there is no trust for sale in which case the settlor never contemplated that any such capital moneys should come to trustee's hands at all. Trustees have no power under the general law to appoint agents to receive capital moneys at any rate in cases where they could not themselves give a valid receipt. The definition of the word "owner" in Section 3 of Ordinance 135 (Municipal) has come down to us from Municipal Ordinance 1887 with only slight changes. If that Ordinance is looked at it is clear that the original intention of the definition was to impose upon the agent or other receiver of rent of premises all the obligations of the owner of land *vis-a-vis* the Municipality. The general rule